

The Identity Project

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February 4, 2019

Eleanor D. Acheson, Executive Vice President, General Counsel, and Corporate Secretary
Law Department
National Railroad Passenger Corporation (Amtrak)
One Massachusetts Avenue, NW
Washington, DC 20001

Re: FOIA request 15-FOI-00021

FREEDOM OF INFORMATION ACT APPEAL

This is an appeal under the Freedom of Information Act, 5 U.S.C. §552.

On October 29, 2014, I submitted a request by e-mail to [<foiarequests@amtrak.com>](mailto:foiarequests@amtrak.com) for access to and copies of certain records pertaining to Amtrak policies and procedures related to the use and sharing with other government agencies of data pertaining to Amtrak passengers and customers.

My request included the following seven categories of records:

“(1) Any records of policies, procedures, technical specifications, contracts (including agency appointment agreements), or directives to staff, contractors, or agents pertaining to transfers of data about Amtrak passengers or customers to the Department of Homeland Security (DHS), any DHS component including US Customs and Border Protection (USCBP), the Canadian Border Services Agency (CBSA), any other Canadian government agency, or any other foreign government, or the subsequent handling or use of such data, including without limitation Advanced Passenger Information (API) and any personally identifiable data obtained or derived from the ARROW reservation system.

(2) Any records pertaining to the legal basis for such data transfers, including any e-mail messages pertaining to this subject within or between Amtrak, Amtrak agents, Amtrak contractors, and any third party or parties.

“(3) Any records of policies, procedures, technical specifications, contracts (including agency appointment agreements), or directives to staff, contractors, or agents (including without limitation travel agencies and agents authorized to sell Amtrak tickets, and other ARROW users) regarding disclosures to be made concerning transfers of data about Amtrak passengers or customers to government agencies including DHS.

“(4) Any records of policies, procedures, reports, or directives to staff, contractors, or agents (including without limitation travel agencies and agents authorized to sell Amtrak tickets, and other ARROW users) regarding compliance with the Personal Information Protection and Electronic Documents Act (PIPEDA) of Canada, including handling of requests for records or other requests or complaints made pursuant to PIPEDA and any disclosures to be made to passengers or customers.

“(5) Any e-mail messages within or between Amtrak and Amtrak agents, Amtrak contractors, and any third party or parties containing any of the text strings ‘Personal Information Protection and Electronic Documents Act’, ‘PIPEDA’, or ‘Privacy Commissioner of Canada’.”

“(6) Any electronic file in which any of the above records are included.

“(7) All metadata pertaining to any such file, such as file system information indicating the creation data, modification date, etc.”

With respect to the form of production of requested records, I requested as follows:

“I request that all responsive records be provided in electronic form.

“With respect to any records held in electronic form, I request that they be provided in the original electronic form in which they are held, as complete bitwise digital copies of the original e-mail archive files, word processing files, or other electronic files, including any file headers, embedded metadata, and all other file content. All such data is subject to FOIA and is expressly included within the scope of this request for records.

“With respect to any e-mail messages included in the responsive records, I specifically request access to and copies of the complete informational content of the underlying electronic records, in their full and complete form including all headers and attachments, fully expanded e-mail addresses, full addresses for address ‘aliases’, full lists for ‘distribution list’ aliases, and all related metadata.”

No records were released before the statutory deadline for Amtrak’s response.

Beginning March 11, 2015, and continuing through December 21, 2018, I received a series of PDF files, apparently created in response to my request.

Those PDF file contained no searchable text, although they appear to have been created from records that were originally found or created as digital text files. The PDF files contained only rasterized images of “page views” or screenshots of portions of responsive records, as those records were viewed in some unspecified software application(s).

None of these thousands of images were text-searchable, making it prohibitively burdensome to search, index, or organize the underlying responsive textual data.

It is apparent that there is not a one-to-one correspondence between these newly created rasterized PDF images files and the responsive files. But it is impossible to determine from the PDF files which file(s) correspond(s) to which of the original files, or any of the metadata pertaining to the original responsive files.

Some portions of files were withheld as “Non-Responsive”. See, for example, the images reproduced as Attachment A to this appeal. No exemption was claimed as the basis for any of these withholdings of portions of files. All portions of such files are responsive to item (6) of my request. All these withholdings are plain error and must be reversed and the responsive files produced in their entirety on remand.

All file metadata in the responsive records was removed or replaced with new and unrelated metadata pertaining to the newly-created PDF files which were substituted for the responsive records. No exemption was claimed with respect to the withheld metadata.

All metadata pertaining to otherwise responsive files was explicitly requested in item (7) of my request. Metadata retained in typical digital filesystems includes the filename including any extension; the filesize in bytes, KB, MB, or GB; the name of the workstations, server, other device, or virtual server, or the label on the archival or backup media, in which the file was found; the path to the file on that device or in that filesystem; the creation, modification, and/or any other date(s) for the file, as stored in the filesystem in which it is found; and the owner and all permissions (creation, access, and modification) for the file in the filesystem in which it is found.

A search reasonably calculated to retrieve records responsive to item (7) of my request would include a search for each of these items of metadata with respect to each otherwise responsive file. All such metadata records are responsive to this request, and each such item of responsive metadata must be produced unless it is exempt.

None of the requested and responsive e-mail message source files were produced. The images produced showed only selected headers, and only in modified form. E-mail addresses in the responsive records, for example, were replaced with e-mail “nicknames”.

An address such as “Jane Doe <jane.doe@company.com>” in an e-mail header, for example, was improperly replaced with only “Jane Doe”. In many cases, this substituted short-form name was then withheld pursuant to FOIA Exemption 6.

But while “Jane Doe” might be exempt, “Company.com” is not personal information and could not be exempt pursuant to FOIA Exemption 6.

The substitution of a “nickname” or “friendly view” for the full e-mail address in the header of a responsive record thus leads to the improper withholding of the name of the company (or, in the case of Amtrak or a government department, the agency) sending or receiving an e-mail message. This pattern is repeated throughout the PDF files.

These withholdings of non-exempt portions of responsive e-mail message source files, including full headers were plain error. They must be reversed on appeal and all non-exempt portions of e-mail message source files, including all headers, must be produced in the requested native, text-searchable form on remand.

Several of the images substituted for the responsive e-mail messages contain icons representing files which were included in the original e-mail messages as attachments. See, for example, the page images reproduced as Attachment B to this appeal. None of the collections of images you produced indicate the filenames of the responsive records from which they were created. But it appears that many of the files included in the responsive email records have not been included in any form in the responses.

I presume that these attachments are actually included in the responsive digital records of email messages, as they are held on mail servers or on backup or archival digital media. And where an icon in a view or image of a responsive e-mail record indicates that the original message contained an attachment, a search reasonably calculated to retrieve responsive records would include a search for each file indicated as included as an attachment in the responsive email messages, including a search of the original digital records on servers or backup or archival media. The failure to conduct such a search was error, and should be reversed and a new search conducted on remand.

Since the 1996 FOIA amendments, the FOIA statute has required that, “In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.” (5 U.S.C. § 552(f)(2), effective March 31, 1997).

It is obvious that digital files are readily reproducible by Amtrak (or anyone else) in the form of bitwise digital copies. But none of the responsive records were provided in that form, despite my explicit, unambiguous, written request for files in native format.

The failure to search for or release metadata, the failure to release responsive

records in the requested form or any text-searchable form, and the withholding of responsive data (not based on any FOIA exemption) inherent in the substitution of new files in a different format for the responsive records, are all plain error requiring reversal on appeal, additional search and production of responsive records on remand, and production of all responsive records in the native, text-searchable file format requested.

The PDF files I received were created from digital files responsive in part to items (1), (2), and (3) of my request. But obviously responsive records were not produced, strongly suggesting that an adequate search for such records was not conducted.

In particular, our request included, “(1) Any records of policies... pertaining to transfers of data about Amtrak passengers or customers to the Department of Homeland Security (DHS)”, “(2) and “the legal basis for such data transfers”, and “(3) Any records ... of policies... regarding disclosures to be made concerning transfers of data about Amtrak passengers or customers to government agencies including DHS.”

The most obvious such "policies.. regarding disclosures to be made concerning transfers of data about Amtrak passengers or customers to ... DHS" are those included in, and related to, Amtrak's privacy policy, including the version available at <<https://www.amtrak.com/privacy-policy#section-4>>, which explicitly discusses such transfers of data pertaining to passengers to DHS and the legal basis for such transfers:

“Amtrak may share your personal information if required by law, court order, subpoena, or other legal process when requested by the United States Department of Homeland Security (DHS) pursuant to 49 U.S.C. 114 (2012), the Intelligence Reform and Terrorism Prevention Act of 2004, 50 U.S.C. 401 (2004), and implementing regulations pursuant to 49 C.F.R. § 1580 (2008).”

This policy, whose existence is apparent from the Amtrak.com website, and related records, are obviously responsive to my request, but no records of this policy or of any related records were released in response to this request.

Any search reasonably calculated to retrieve records responsive to these portions of my request would have included a search for records of privacy policies and of records pertaining to those policies or the legal basis for them. The failure to conduct such a search and release responsive records, including privacy policies and related records, was error which should be reversed on appeal. An adequate search should be conducted and nonexempt responsive records should be released on remand.

No records were released responsive to items (4), (5), (6), or (7) of my request. No exemption was claimed with respect to any of these records, and there is no indication that any search was conducted for such records.

It appears likely that no such search, or an inadequate search, was conducted.

A search reasonably calculated to retrieve records responsive to item (5), for example, would include a full-text search (“grep”) of the files in Amtrak’s e-mail archives for each of the case-insensitive text strings, “Personal Information Protection and Electronic Documents Act”, “PIPEDA”, or “Privacy Commissioner of Canada” (without the quotation marks). There is no indication that such a search was conducted.

I appeal: (A) the adequacy of the search; (B) the withholding of all requested metadata; (C) all withholdings as “Non-Responsive” of portions of files containing otherwise-responsive records; (D) all withholding of attachment files included in, or linked to, responsive e-mail messages; (E) the failure to produce responsive records in the requested form or any text-searchable form; and (F) the substitution for the responsive records of newly-created files in a less useful format, neither the original nor the requested format, and containing less information than either the original or the requested format, including the substitution of rasterized images for text files and the substitution of incomplete and altered views of e-mail data for the responsive e-mail message source files, which results in both a violation of my right to receive records in the requested format and the unauthorized withholding of the information contained in the original records, but not in the substituted aggregated PDF files of rasterized images.

As the FOIA statute requires, I expect that you will act on this appeal and produce responsive documents within 20 working days.

Sincerely,

Edward Hasbrouck
Consultant on travel-related civil liberties and human rights issues
The Identity Project

Attachment A: Examples of images containing portions of files withheld as “Non-Responsive”

Attachment B: Examples of images containing icons representing withheld attachment files included in original e-mail messages

Attachment A

Border Crossing.txt

Exemption 6

MTRAK/GGGG/H
6 SSR OTHS 1A KK1 ID NUM OR GENDER NO EXP DATE FOR BC
* AK 2V 026D13 24JAN 1928Z HLMT-31JAN/USD 60.00

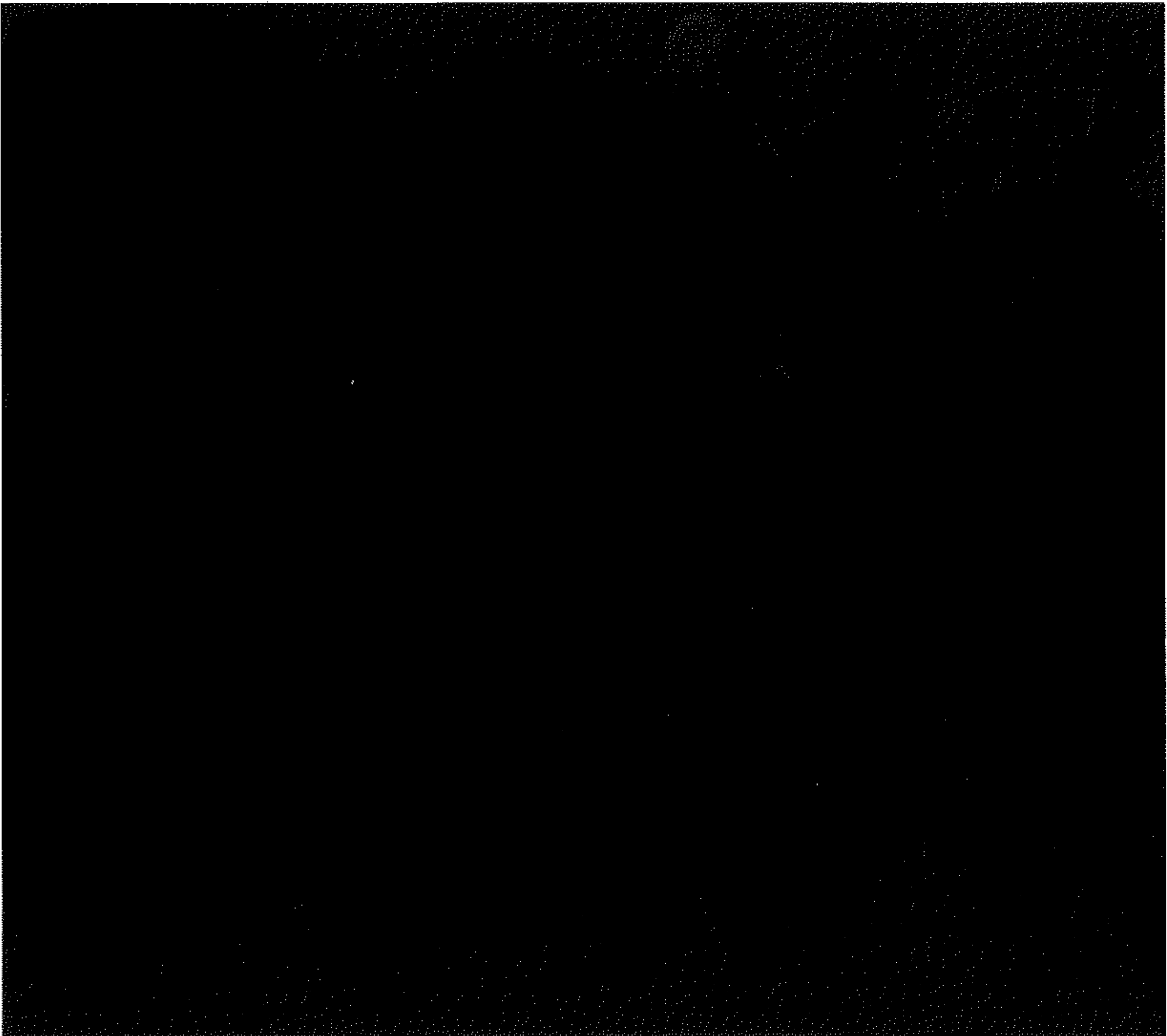
Product Manager - Amadeus Rail

T:
E:

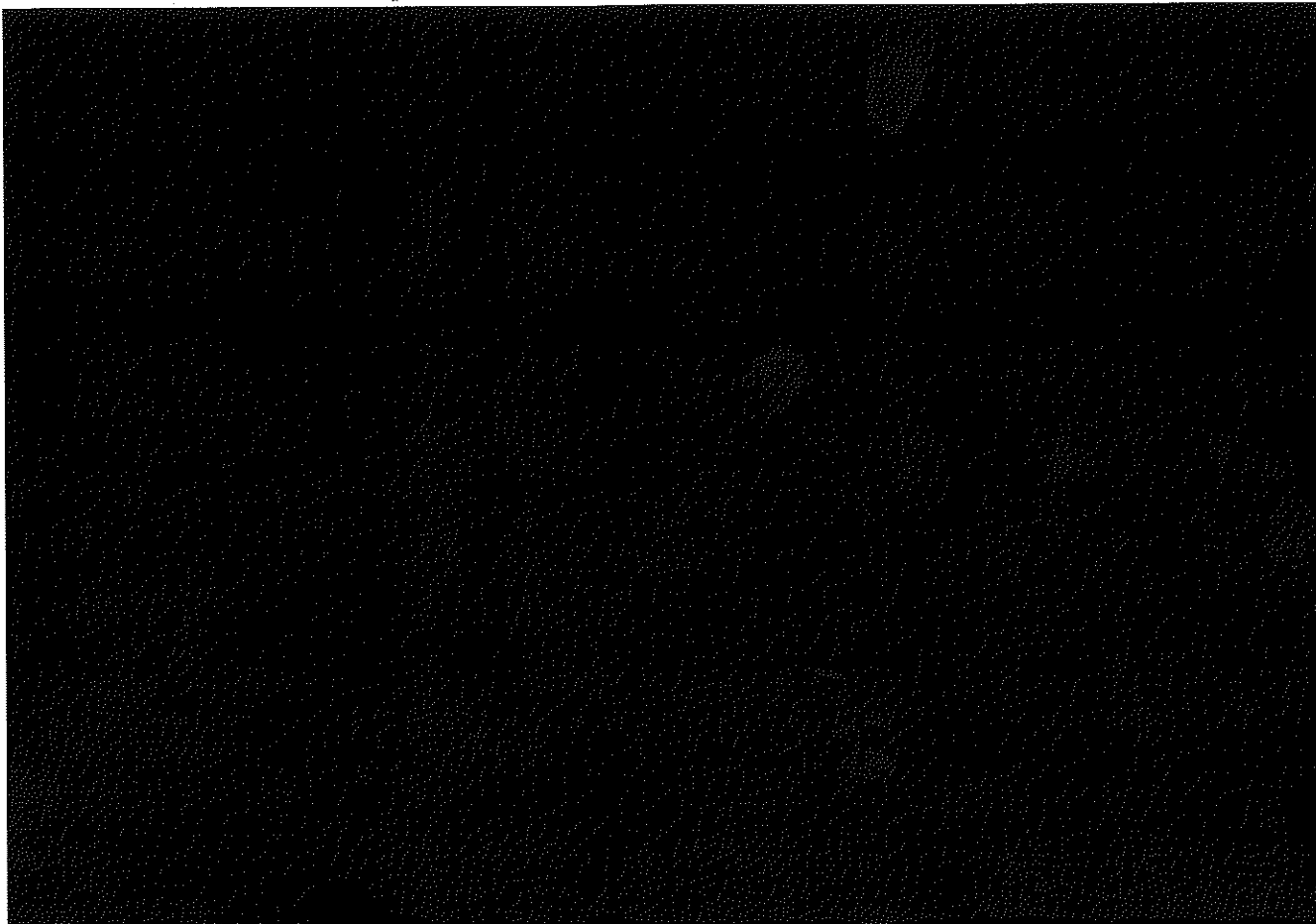
Exemption 6

www.amadeus.com

Non-Responsive



Non-Responsive



From: [REDACTED]
Sent: Tuesday, January 24, 2006 3:10 PM
To: [REDACTED]
Cc: [REDACTED]

Exemption 6

Subject: RE: Amtrak APIS document needed

Both 2 and 4 digit years will be accepted.

I'm working on an updated version of the document that will be sent as soon as it is finished.

[REDACTED]

Exemption 6

From: [REDACTED]
Sent: Tuesday, January 24, 2006 1:45 PM
To: [REDACTED]
Cc: [REDACTED]

Attachment B

[REDACTED]

From: [REDACTED]
Sent: Wednesday, August 08, 2012 8:32 PM
To: [REDACTED]
Subject: USCBP Visit

[REDACTED]

I feel my visit to the border went very well. I was able to see the operation in regards for each aspect of what comes across the border and understand how we can help them better with the deployment of eTicketing.

We first met in the main building and went over what happened before and after the devices came into play.

Before the train arrives the custom department currently receives a faxed Arrow manifest (SOL*B – attached) from the Albany station around 5:00a in the morning. Arrow also electronically sends a manifest to the border patrol through the APIS system. There are some problems with this as sometimes duplicate names appear on the manifest in the APIS system which can cause some confusion with the Border Patrol agents.

They then compare the manifest received from Albany and the APIS information to narrow down the list of most likely on board and see if anything is flagged. They do understand this is a planned manifest.

Around 11a they leave the main site to meet the train when it arrives. The station building itself is closed with asbestos warnings all over it. The Border Patrol has a small separate secure office train side where they can do some research on passengers who were not on the manifest as needed. This is separate from the station. They showed us the office but they don't go in there unless they need to. It has a computer and small printer. The agent was able to pull up his email and saw the report but didn't look at it as he had to work the train.

When they do their inspections the conductors only open the front door on the first coach. The agent's board there worked from to the back of the train. If they need to pull someone off they do so and the train continues without them.

Now with eTicketing in place they are still perform the above, however when they get on board they borrow the device from the conductor and use the 2+2 screen select the on board button to access the passenger list. They also utilize the HNF information for those who did not have reservations and spend more time on those folks.

I discussed the use of the business objects report with them and they are very happy that they can see those actuals. However there is a gap between the information that's sent to APIS and what's on the Business Objects report (detailed below). Since we are currently emailing the reports they indicated that the ideal time to receive this report is 10:30a and no later. As they leave the office at 11a to go to the train, it gives them time to go through it. I believe we have been sending that a little later than that. The train leaves St Lambert at 9:45a so, unless the train is late, the report should be as up to date by 10:30a than we're going to get.

I did explain the risk of giving them a device and explained that they can have access to the reports and they will be able to pull them at their digression. They are happy with that but at this point they cannot access the Citrix site due to their firewall restrictions. I will be sending the Citrix link so they can get firewall clearance and also requesting the names and information of those who need access. They have about 7-10 agents that may access the reports.

I believe they knew I wasn't there to give them a device but didn't seem to care as (my gut feel is) regardless of the reports they will still borrow the conductors device and use that when they board the train as the conductor will do what the border agent asks and it's a lot easier than carrying a paper manifest.

To improve what we currently provide, I recommend that for border crossing reservations we also pull the PNR information that is used for customs so that can be shown on the ticket details on the device or at minimum, transmitted on the business objects report. This information is only required for border crossing reservations and must be entered into all border crossing reservations.

Below I've provided more details on when we electronically send the Arrow manifest and also the comparison of the two reports.

Let me know if you have any questions.

Information to note:

Arrow Manifest

Currently the Arrow manifest is electronically transmitted at specific times prior to departing the last station prior to the border. This is the case on all borders.

- 3hours before
- 15 minutes before
- 1 minute before
- O/S time

Discrepancies between Arrow and Business Object Reports

The passenger information is stored in the reservation in Arrow

Field Name	Arrow APIS Manifest	Business Objects
Passenger Total counts		X
Passengers Full Name	X	X
Crew's Full Name	X	
Name Identifier	X (ex. Crew, primary, Infant)	
PNR	X	X
RBD	X	
Date of Birth	X	
Passport Country	X	
Gender	X	
ID Type	X	
ID Number	X	
Origin		X
Destination		X
Lift Type		X

X –Data include

I've also attached the A02 Documents and manifest reports as reference.



68-7Aug_Acutal... A02PD02G.DOC



A02S004.doc



BORDER
CROSSING NAM...

Exemption 6

[REDACTED]
Amtrak

[REDACTED] - Sales and Reservation Systems

60 Massachusetts Ave. NE.4W-111

Washington, DC 20002

Phone: [REDACTED] (Bell) [REDACTED] (Mobile) [REDACTED]